

FOOD TRUCK/VENDOR AGREEMENT

This VENDOR AGREEMENT (the "Agreement") is entered into on this ___ day of _____, 20__ (the "Effective Date") by and between _____ (the "Vendor", with its principal business/mailing address located at _____) and the City of Erlanger ("The City")

Each party is individually referred to as a "Party" and collectively as the "Parties".

NOW THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants set forth herein, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Term of the Agreement.** This Agreement shall not become effective until both Parties execute this Agreement and the Vendor supplies insurance documents pursuant to Section 5. The term of this Agreement shall be for September 24, 2022, (the "Term") [a new agreement is needed for each calendar year] unless ended earlier pursuant to Section 2 of this Agreement.

2. **Termination of this Agreement.** The City may end this Agreement prior to the Term ending, with or without cause, and in The City's sole discretion, without any penalty whatsoever.

3. **Food Truck Space, Merchandise, & Display Standards.** The City shall assign Food Truck and Vendor, in its sole discretion, a parking space or booth space. The City has, in its sole discretion, final say on how the space is used and how the Food Truck presents to the public. Food Trucks must supply their own connections, including adapters, for the permanent power provided. The City reserves the right to change Food Truck's parking space without notice or consent at any time. Food Truck shall not affix any personal property to The City's premises without The City's prior, written consent. Food Trucks shall be considerate of other vendors, The City, and all patrons of The City. The City shall, under no circumstances, be liable for any loss or damage to Vendor's property. Vendor agrees, at its sole cost and expense, to keep its space clean and in a manner satisfactory to The City. Food Trucks shall not transfer, assign, sublet, or share any booth space without written approval, and any such attempt to do so is automatically void. Additionally, Vendor shall have all property removed by the end of their scheduled time.

4. **Vendor Documentation.** To the extent that The City requests and requires documentation from Food Trucks, Food Truck shall provide The City with true and correct copies of any required documentation, including but not limited to, business licenses, permits, sales tax certificates, certificates of authority, certificates of insurance (including endorsements listing The City), and/or applicable waivers.

5. **Indemnification**. Food Truck agrees to indemnify, defend, and hold harmless The City, its managers, its members, its affiliates, officers, employees, agents, and representatives from and against any and all losses, lawsuits, judgments, causes of action, costs, damages, claims (actual or alleged) and expenses resulting from claims for nuisance, bodily injury, tort, death, property destruction, and/or property damage arising out of or incidental to or in any way resulting from the acts or omissions, whether negligent or otherwise, of the Food Truck, its employees, subcontractors, sublicenses, subtenants, or agents, if any, in the performance of this Agreement and/or the use of its space and/or the use of The City's premises.

6. **Limitation of Liability**. In no event shall The City its affiliates, officers, employees, agents, representatives, successors, or assignees be liable to the Vendor and/or its affiliates and/or respective managers, members, officers, employees, agents, representatives or customers (collectively "The City") for any loss, liability, theft, damage, claim or demand, including, but not limited to, theft or damage to Food Truck's property, furnishings, equipment and merchandise that Vendor may incur arising out of Vendor's operations at The City, whether caused by the negligence of The City or otherwise. The City shall not carry insurance covering any such property theft, loss or damage and Vendor shall be solely responsible to carry its own insurance or otherwise accept the risk of any such theft, loss, or damage. In furtherance of the foregoing, in no event shall The City be liable for any consequential, special, indirect, incidental, or punitive damages, costs, expenses or losses (including without limitation lost profits, loss of business, anticipatory profits and opportunity costs). To the extent Food Truck maintains any claim against The City, Vendor shall look solely to The City's leasehold interest in The City's premises and the proceeds thereof for the recovery of any judgment against The City, and no other property or assets of The City shall be subject to levy, execution or other enforcement procedure for the satisfaction of Food Truck's remedies under or with respect to this Agreement. In no event shall The City be liable to Food Truck or any other person or entity for consequential, special, indirect, incidental, or punitive damages, costs, expenses or losses (including without limitation lost profits, loss of business, anticipatory profits and opportunity costs).

7. **Video and Photography Release**. Food Truck and Vendors hereby grants to The City the irrevocable and unlimited right and permission to use photographs and/or video recordings of Food Truck and Vendor, Food Truck and Vendors' intellectual property and Food Truck and Vendors' property on each of The City's social medial and other Internet properties, publications, promotional flyers, marketing materials, derivative works, or for any other similar purpose without compensation or permission from Food Truck and Vendor. Food Truck and Vendor hereby releases, acquits and forever discharges The City from any and all claims, demands, rights, promises, damages, and/or liabilities arising out of or in connection with the use or distribution of said photographs and/or video recordings, including but not limited to any claims for invasion of privacy, appropriation, likeness, or defamation. Food Truck and Vendor hereby

warrants that Food Truck and Vendor and each of its employees and subcontractors is eighteen (18) years of age or older.

8. **Miscellaneous**. This Agreement constitutes the entire agreement between the Parties and that no other agreements, oral or written, are binding upon the Parties unless said in this Agreement. This Agreement may only be changed by a written agreement that is signed by both Parties. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, shall not be affected, and each provision of this Agreement shall be valid and shall be enforceable to the extent permitted by law. This Agreement may not be assigned to a third Party without the written consent of The City. This Agreement shall be governed by the Commonwealth of Kentucky without giving effect to any principles of conflicts of laws. Each Party hereby irrevocably submits to the jurisdiction of any State or Federal Court sitting in Kenton County, Kentucky, in respect of any suit, action or proceeding arising out of or relating to this Agreement, and irrevocably accepts for itself and in respect of its property, generally and unconditionally, jurisdiction of such courts. This Agreement may be executed in any number of counterparts and in electronic format, each of which when so executed and delivered (whether electronically or otherwise) shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Agreement and intend to be bound thereby as of the Effective date stated above.

Mayor Jessica Fette
Erlanger, Kentucky